

***NDEP Bureau of Corrective Actions
Delivery Prohibition Regulations
Guidance Document
July 1, 2008***

**ADOPTED REGULATION OF THE
STATE ENVIRONMENTAL COMMISSION**

LCB File No. R004-08

Effective April 17, 2008

AUTHORITY: §§1-9, [NRS 459.826](#) and [459.830](#).

A REGULATION relating to underground storage tanks; prohibiting deliveries of regulated substances to ineligible underground storage tanks under certain circumstances; providing exceptions; setting forth the circumstances under which an owner or operator of an ineligible underground storage tank may reestablish the eligibility of the underground storage tank to receive such a delivery; and providing other matters properly relating thereto.

DELIVERY PROHIBITION REGULATION LANGUAGE	EXPLANATION/RATIONALE/GUIDANCE
<p>Section 1. Chapter 459 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this regulation.</p>	
<p>Sec. 2. <i>“Red tag” means a unique identification device, tag or other mechanism of a design approved by the Division that is placed on the fill pipe of an underground storage tank to indicate that the underground storage tank is ineligible to receive a delivery of a regulated substance.</i></p>	

DELIVERY PROHIBITION REGULATION LANGUAGE	EXPLANATION/RATIONALE/GUIDANCE
<p><i>Sec. 3. 1. Except as otherwise provided in subsection 2, an owner or operator of a facility specified by the Division at which an underground storage tank is located shall not request or accept a delivery of a regulated substance to the underground storage tank if the underground storage tank is marked with a red tag in accordance with the provisions of sections 4 and 5 of this regulation.</i></p> <p><i>2. The Division may authorize a single delivery, or multiple deliveries for not more than 180 days, to an underground storage tank that is marked with a red tag by providing a deferral in writing to the owner or operator of the facility, if the owner or operator demonstrates to the satisfaction of the Division that the delivery:</i></p> <ul style="list-style-type: none"> <i>(a) Is required because of an emergency;</i> <i>(b) Is for the purpose of testing or calibrating the underground storage tank to reestablish eligibility to receive a delivery pursuant to section 6 of this regulation; or</i> <i>(c) Is required to maintain the availability of, or access to, motor vehicle fuel in any rural or remote area of this State specified by the Division.</i> 	<p>All decisions to prohibit delivery must receive concurrence from NDEP. NDEP will develop procedures to notify deliverers that a facility is not eligible to accept delivery.</p> <p>This decision will be made on a case by case basis.</p>

DELIVERY PROHIBITION REGULATION LANGUAGE	EXPLANATION/RATIONALE/GUIDANCE
<p>Sec. 4. An underground storage tank is ineligible to receive a delivery of a regulated substance if:</p> <p>1. The Division:</p> <p>(a) Determines that any required component of the underground storage tank is not installed, including, without limitation, any equipment that is designed to:</p> <p>(1) Prevent a spill or overfill;</p> <p>(2) Detect a leak; or</p> <p>(3) Protect the underground storage tank from corrosion; or</p> <p>(b) Identifies a failure in the operation of any equipment specified in paragraph (a) and the failure is not corrected:</p> <p>(1) Within 30 days after the failure is discovered; or</p> <p>(2) Within any other reasonable period specified by the Division;</p> <p>and</p> <p>2. The Division places, or causes to be placed, a red tag on the fill pipe of the underground storage tank.</p>	

DELIVERY PROHIBITION REGULATION LANGUAGE	EXPLANATION/RATIONALE/GUIDANCE
<p>Sec. 5. <i>If the Division determines that an underground storage tank located at a facility specified by the Division is ineligible to receive a delivery of a regulated substance, the Division shall provide a written notice of that determination to the owner or operator or an onsite employee of the facility. The notice must include, without limitation:</i></p> <ol style="list-style-type: none"> <i>1. An identification of the underground storage tank;</i> <i>2. The date the Division makes the determination of ineligibility;</i> <i>3. The date of placement of the red tag by the Division or the date by which the red tag must be placed on the underground storage tank, if the Division orders the red tag to be placed by the owner or operator of the facility;</i> <i>4. Instructions for placing the red tag on the fill pipe of the underground storage tank, if the Division orders the red tag to be placed by the owner or operator of the facility;</i> <i>5. The criteria used by the Division to make the determination of ineligibility; and</i> <i>6. The specific remedial actions which the owner or operator of the facility must take in order for the Division to reclassify the underground storage facility tank as eligible to receive a delivery of a regulated substance.</i> 	<p>To promote consistency among programs, any time a Red Tag is considered, all three agencies (NDEP, Washoe County District Health Department and Southern Nevada Health District) will discuss the merits of such action</p> <p>A process to notify deliverers has not yet been developed.</p>

DELIVERY PROHIBITION REGULATION LANGUAGE	EXPLANATION/RATIONALE/GUIDANCE
<p><i>Sec. 6. If the Division determines that an underground storage tank is ineligible to receive a delivery of a regulated substance and the underground storage tank is marked with a red tag pursuant to sections 4 and 5 of this regulation, the Division may reclassify the underground storage tank as eligible to receive such a delivery if:</i></p> <p><i>1. The owner or operator of the facility at which the underground storage tank is located provides to the Division documentation setting forth the remedial actions taken to install any required equipment or to correct any operational failure of that equipment;</i></p> <p><i>2. The Division reviews the documentation to determine the appropriateness of the remedial action taken:</i></p> <p><i>(a) Except as otherwise provided in paragraph (b), within 7 days after the Division receives the documentation; or</i></p> <p><i>(b) Within 14 days after the Division receives the documentation, if the Division determines that an inspection of the site of the underground storage tank is required; and</i></p> <p><i>3. The Division removes the red tag or authorizes the owner or operator of the facility, in writing, to remove the red tag after determining that the remedial actions taken by the owner or operator are appropriate.</i></p>	